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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA
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12 BERNARDINO GINO SANDOVAL,

13 CASE NO. 3:17-cv-5667-RJB-DWC

14 Plaintiff,

15 v.
16 ORDER ON REPORT AND
17 RECOMMENDATION

18 MIKE R. OBENLAND, et al.,

19 Defendants.

20 THIS MATTER comes before the Court on the Report and Recommendation of United
21 States Magistrate Judge David W. Christel. Dkt. 26. The Court has considered the R&R,
22 Plaintiff's Objections, and the remainder of the file herein.

23 The R&R recommends that Jane and John Doe defendants be dismissed without
24 prejudice, based on (1) Plaintiff's failure to respond to a court order, and (2) Plaintiff's failure to
provide identifying information of the Jane and John Doe defendants needed for the court to
serve the defendants. Dkt. 26 at 1. The R&R observed that on February 22, 2018, Plaintiff was
warned that the failure to provide identifying information by March 23, 2018 could result in
dismissal. *Id.* at 2. The R&R noted that, though discovery began on February 1, 2018, "Plaintiff

1 has not indicated he has attempted to obtain the identities of the Doe Defendants through
2 discovery.” *Id.*

3 Plaintiff’s Objections point to discovery efforts not previously developed by the record.
4 *See* Dkt. 32. Plaintiff represents that he requested discovery of defense counsel for the
5 identifications of “WDOC-I&I unit officials” on January 8, 2018. *Id.* at 2. According to Plaintiff,
6 defense counsel responded on January 10, 2018, by indicating that she was “still in the process of
7 obtaining records,” and on January 24, 2018, by indicating that “their [sic] was no investigation
8 by I&I[.]” *Id.* Plaintiff has construed this discovery response as “circumvent[ing] the request
9 intentionally[,]” because Plaintiff’s request was for “identifications of I&I” for the purpose of
10 service of process. *Id.* Plaintiff separately served a discovery request for production of
11 documents on March 30, 2018. *Id.* Plaintiff also represents that his current status as an
12 incarcerated person at the Maleng Regional Justice Center in Kent, Washington, has made it
13 difficult to obtain discovery. *Id.*

14 In general, “the use of ‘John Doe’ to identify a defendant is disfavored,” but “where the
15 identity of the alleged defendant is not known prior to the filing of a complaint, the plaintiff
16 should be given an opportunity through discovery to identify the unknown defendants, unless it
17 is clear that discovery would not uncover the identities, or that the complaint would be dismissed
18 on other grounds.” *Wakefield v. Thompson*, 177 F.3d 1160, 1163 (9th Cir. 1999), citing *Gillespie*
19 *v. Civiletti*, 629 F.2d 637 (9th Cir. 1980) (internal quotations omitted.)

20 Applied here, Plaintiff has made a showing of ongoing discovery efforts to identify the
21 unknown defendants. Although Plaintiff’s showing is untimely, Plaintiff should be afforded the
22 chance to pursue discovery to identify the Jane and John Doe defendants.

The Court respectfully DECLINES TO ADOPT the Report and Recommendation (Dkt. 26). Dismissal of the Jane and John Doe Defendants is not warranted at present.

IT IS SO ORDERED.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 11th day of May, 2018.

Robert J. Bryan

ROBERT J. BRYAN
United States District Judge